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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMETRICE JAMES MAXWELL,

Defendant and Appellant.

E049885

(Super.Ct.No. FSB801463)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bryan Foster,
Judge. Affirmed.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Demetrice James Maxwell was charged with possession
of marijuana for sale. (Health & Saf. Code, § 11359, count 1.) Pursuant to a plea
agreement, count 1 was dismissed, and a new charge of possession of concentrated

cannibis (Health & Saf. Code, § 11357, subd. (a), count 3) was added.¹ Defendant pled guilty to count 3, on the condition that he would be sentenced to three years in state prison, but the sentence would be suspended, and he would be placed on probation. On April 7, 2009, the court sentenced defendant to three years' probation (suspended), and specified that defendant was to serve 180 days in the San Bernardino County jail, with credit for 13 days served. Defendant was ordered to serve the balance of his sentence by participating in a weekend work release program, commencing no later than April 24, 2009.

On May 14, 2009, defendant informed the court that he had numerous medical appointments that were interfering with him participating in a weekend work release program. Thus, defense counsel requested a 60-day stay on the work release program reporting date. The court granted the request, but indicated it was "leaning toward having [defendant] [serve] straight time."

On July 16, 2009, defendant appeared in court with counsel. Counsel asked the court to "reinstate his weekends," and "give him until September 15 to enroll" in a work release program. Counsel also asked if defendant could work on "Wednesdays and Thursdays" instead of weekends, beginning in September. The court granted the request.

¹ We note the plea agreement indicates defendant was originally charged with possession for sale of cocaine base (Health & Saf. Code, § 11351), as well as possession of marijuana for sale (Health & Saf. Code, § 11359). However, the felony complaint lists a different defendant in the possession for sale of cocaine base count.

On September 23, 2009, defendant appeared without counsel and explained to the court that the work release program repeatedly rejected him because of his medical problems. Defendant also informed the court that he worked Friday through Mondays, went to doctor appointments on “Mondays and Tuesdays,” and was only available for the work release program on “Wednesday and Thursday.” The court directed defendant “to get on [a] waiting list” in order to serve his time in a *weekday* work release program. The court ordered defendant back to court on October 30, 2009, to see if he had been accepted into a work release program.

After defendant failed to appear on October 30, 2009, the court issued a bench warrant. Defendant then appeared in court, without counsel, on November 10, 2009. He requested a 30-day extension to “take care of [his] business and turn [himself] in and do the straight time,” instead of participating in a work release program. The court agreed to convert the term to straight time and ordered defendant to surrender by December 8, 2009.

On December 8, 2009, defendant appeared with counsel and asked to withdraw his plea because he originally had agreed to participate in a weekend work release program, but that no program would accept him because of his medical conditions. The court denied the request. Defendant’s sentence was modified, and he was sentenced to serve 177 days of straight time in the county jail.

Defendant filed a notice of appeal following the sentencing hearing. We affirm.

FACTUAL BACKGROUND

The following facts are taken from the probation report: On April 3, 2008, police officers executed a search warrant at an apartment and found defendant sitting in a chair inside the apartment. They observed him throw a baggie of suspected cocaine base on the floor. The officers searched the apartment and found 14.4 grams of cocaine base, 35.6 grams of marijuana, a revolver, \$400 in cash, and a digital scale. All of the narcotics were packaged for sale.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case and one potential arguable issue: whether it was valid for the trial court to obtain defendant's agreement to a change in the probation conditions in the absence of defense counsel. Counsel has also requested this court undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

We have now concluded our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.